

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

ORIGINAL
ORIGINAL
FILE

In re Applications of) MM DOCKET NO. 92-6
NORMANDY BROADCASTING CORP.) File No. BRH-910129UR
)
For Renewal of License of)
Station WYLR(FM) (95.9 MHz))
Glens Falls, New York)
)
and)
)
LAWRENCE N. BRANDT) File No. BPH-910430MB
)
For a Construction Permit for)
a New FM Station on 95.9 MHz)
at Glens Falls, New York)

To: Administrative Law Judge
Richard L. Sippel

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APR 21 1992

Federal Communications Commission
Office of the Secretary

OPPOSITION TO PETITION TO ENLARGE ISSUES

Lawrence N. Brandt ("Brandt"), by his attorneys, hereby opposes the Motion to Modify and Enlarge Issues ("Motion") that Normandy Broadcasting Corporation ("Normandy") filed in this proceeding on or about April 13, 1992. In its Motion, Normandy requests issues to determine

(i) "whether Brandt purposely deceived the Commission as to Normandy's Certification on its renewal regarding whether it had placed materials in its public file at appropriate times," and

(ii) "whether Brandt purposely withheld information from the FCC and Normandy in his application...."

For the reasons discussed below, the Motion should be dismissed as untimely or, in the alternative, denied as totally lacking in substantive merit.

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List A B C D E

I. Normandy's Motion Is Untimely

The Hearing Designation Order in this case was published in the Federal Register on January 24, 1992. 57 Fed. Reg. 2911. Accordingly, pursuant to Section 1.229 (b)(1) of the Commission's Rules, the deadline for filing petitions to enlarge in this proceeding was February 24, 1992. The second issue requested by Normandy is clearly predicated on information which Normandy could have discovered with reasonable diligence prior to this deadline. Therefore the request for the second issue is untimely. Moreover, the first issue requested by Normandy is predicated upon allegations contained in the Petition to Modify or Enlarge Issues that Brandt filed on February 24, 1992. Pursuant to Section 1.229 (b)(3) of the Commission's Rules, petitions to enlarge issues based on "newly discovered evidence" must be filed within 15 days of the discovery of such evidence. Accordingly, Normandy's request for the first issue is also untimely.

As Normandy's Motion is untimely and contains no showing of good cause for late filing, it should be summarily dismissed. Great Lakes Broadcasting, Inc., 6 FCC Rcd 4331 (1991).

II. Normandy's Motion Must Be Denied on the Merits

(a) Brandt Did Not "Deceive" the Commission Concerning Normandy's Certification in Its Renewal Application

In the February 24, 1992 Petition to Modify and Enlarge Issues against Normandy, Brandt alleged that "Normandy's Certification that it placed the [issues/programs] lists in

WYLR's files at the appropriate times was clearly false."

Normandy claims that this allegation, which Brandt repeated in the Supplement to his Petition to Modify and Enlarge Issues was, itself false, and constituted a purposeful attempt to deceive the Commission. Normandy's claim in this regard is predicated on the fact that it had answered "no" to Question 8 on the renewal form, which asked whether it had placed its issues/programs lists in its public file at the appropriate times. However, in addition to answering the specific question on the form "no," Normandy provided an exhibit explaining the "no" answer in which it represented that, with one exception, it had placed the required lists in its public file at the appropriate times. As the information submitted with Brandt's Petition to Modify and Enlarge Issues establishes a prima facie case that this representation was false, Brandt's allegation that Normandy had misrepresented in its renewal application that it had placed its issues programs lists in its public file at the appropriate times was clearly not an attempt to deceive the Commission about relevant facts, and was in no way improper.^{1/}

II. Brandt Did Not Withhold Any Information

Normandy's allegation that Brandt withheld information from the FCC in his application is based on the fact that Brandt did

^{1/} Since the allegation that Normandy claims to have been deceptive was based exclusively on information contained in WYLR's license renewal application, the contention that Brandt "purposely deceived the Commission" as to the substance of this information is absurd.

not disclose in his application that he has a number of applications for MMDS facilities pending with the Commission. There was no reason for Brandt to report in his application that he is an applicant for, or licensee of, MMDS facilities since FCC Form 314 only asks for information concerning interests in, and applications for, "broadcast" stations. Further evidence that Brandt has not attempted to conceal his MMDS interests is contained in Brandt's Integration and Diversification Statement filed February 21, 1992, wherein Brandt reported in response to the presiding judge's directive that the parties disclose all media interests that he is the licensee of several MMDS facilities.

WHEREFORE, for the foregoing reasons, the Motion to Modify or Enlarge Issues that Normandy Broadcasting Corporation filed on or about April 13, 1992 should be dismissed as untimely, or it should be denied.

Respectfully submitted,



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Date: April 21, 1992

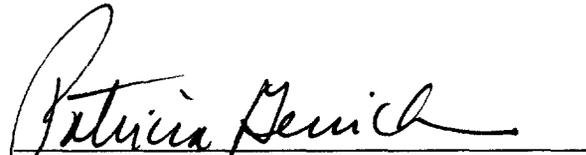
CERTIFICATE OF SERVICE

I, PATRICIA GERRICK, a secretary in the law office of Arent, Fox, Kintner, Plotkin & Kahn do hereby certify that a copy of the foregoing **OPPOSITION TO PETITION TO ENLARGE ISSUES** has been sent via U.S. Mail, First-Class postage prepaid this 21st day of April, 1992 to the following:

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Patricia Gerrick

* Hand Delivered